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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th January 2006

No. 821-li/1(BH)-42/1992 (pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st December 2005 in Industrial Dispute Case No. 37 of 1994 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of S.D.O., Irrigation Subdivision, Basudevpur, District Bhadrak and its workman Shri Gopinath Rana and 4 others, At Prabodhapur (Para), P.O. Mandari, District Balasore was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 37 OF 1994

Dated the 31st December 2005

Present:

Sk. Jan Hossain, o.s.j.s. (Sr. Branch)
Presiding Officer, Industrial Tribunal
Bhubaneswar.

Between:

The Management of S.D.O. . . . First Party—Management
Irrigation Subdivision, Basudevpur
Dist. Bhadrak.

And

Their workman Shri Gopinath Rana Second Party—Workmen
and 4 others, At Prabodhapur (Para)
P.O. Mandari, Dist. Balasore.

Appearances :

For the First Party—Management ..	Shri S. S. Kabi, A.G.P.
For the Second Party—Workmen ..	Shri N.K. Mishra, Advocate

AWARD

The Government of Orissa in the Labour & Employment Department, in exercise of powers conferred upon them by sub-section (5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. 4857—li/q-BIL-42/1992-L.E., dated the 25th April 1994 :

“Whether the action of the Executive Engineer, Balasore Irrigation Division, Balasore in retrenching the following workmen from the date mentioned against each is legal and/or justified ? If not, to what relief they are entitled ?”

Name (1)	Designation (2)	Date of retrenchment (3)
1. Shri Gopinath Rana	N.M.R.	14-8-1989
2. Shri Sachindra Prasad Das	N.M.R.	23-5-1989
3. Shri Brundaban Bhanja	N.M.R.	31-7-1989
4. Shri Raghunath Puhan	D.L.R.	31-7-1989
5. Shri Dibakar Das	N.M.R.	14-8-1989

2. Briefly stated, the workmen were engaged by the S.D.O., Irrigation Department, Basudevpur as D.L.R./N.M.Rs. with effect from the dates given below under the control of the Engineer-in-Chief, Irrigation, Bhubaneswar on daily payment basis :

Sl. No. (1)	Name of the employee (2)	Date of engagement (3)
1	Shri Gopinath Rana	10-3-1984
2	Shri Sachindra Prasad Das	June, 1988
3	Shri Brundaban Bhanja	1-7-1980
4	Shri Raghunath Puhan	10-3-1984
5	Shri Dibakar Das	10-3-1984

It is stated that the authorities without following the mandatory provisions of the Industrial Disputes Act retrenched them with effect from the dates noted below :

Sl. No.	Name	Date of Retrenchment
(1)	(2)	(3)
1	Shri Gopinath Rana	14-8-1989
2	Shri Sachindra Prasad Das	23-5-1989
3	Shri Brundaban Bhanja	31-7-1989
4	Shri Raghunath Puhan	31-7-1989
5	Shri Dibakar Das	14-8-1989

According to the workmen, they worked under the management for more than 240 days in a year and as the order of retrenchment is illegal, they raised an industrial dispute in the year, 1991 and conciliation proceeding was initiated. After failure of the conciliation proceeding, the dispute was referred for adjudication to this Tribunal.

3. The management on receiving notice appeared before this Tribunal and filed its written statement repudiating almost all the allegations made by the workmen and taking stand that the workmen were never regular employees under it. It is stated that as and when necessity arose, the workmen were being engaged on daily wage basis. According to the management, the workmen never rendered continuous service in any calendar year.

4. On the basis of the pleadings of the parties, the Tribunal framed as many as three issues :—

ISSUES

1. Whether the reference is maintainable ?
2. Whether the action of the Executive Engineer, Balasore Irrigation Division, Balasore in retrenching the following workmen from the dates mentioned against each is legal and/or justified ?
3. If not, to what relief they are entitled ?

Sl. No.	Name	Designation	Date of retrenchment
(1)	(2)	(3)	(4)
1.	Shri Gopinath Rana	N.M.R.	14-8-1989
2.	Shri Sachindra Prasad Das	N.M.R.	23-5-1989
3.	Shri Brundaban Bhanja	N.M.R.	31-7-1989

(1)	(2)	(3)	(4)
4.	Shri Raghunath Puhan	D. L. R.	31-7-1989
5.	Shri Dibakar Das	N.M.R.	14-8-1989
4. Whether the second party workmen have completed 240 days of continuous service ?			

5. In course of trial, the workmen got examined themselves. The management examined the Junior Engineers of the Irrigation Department, Soro and Khaira Subdivision of Markona Section and produced documentary evidence marked as Exts. A to C and C/1. This Tribunal after discussing the evidence both oral and documentary arrived at the conclusion noted below :—

“.....Apparently, they were working in the construction of a canal, certainly a time bound project within the scope of Section 25-FFF (2) of the Industrial Disputes Act. The disengagement of the workmen at approximate time from the two groups in suggestive of the closure of the work site.

There is dearthness of materials that within two years, the construction of the canal work was completed within the scope of Section 25-FFF (2) of the Industrial Disputes Act for disentitlement of any compensation under clause (b) of Section 25-F of the Industrial Dispute Act. In absence of such materials and on going through Exts. A, B, C and C/1, certainly W.W. Nos. 1,2, 4 and 5 have worked for more than one year under the first party management unfettered with the temporary breaks in their job engagement ('continuous service' is defined under Section 25-B of the Industrial Disputes Act). W.W. No. 1, Gopinath Rana, W.W. No. 2, Dibakar Das, W.W. No. 4, Raghunath Puhan & W.W. No.5, Brundaban Bhanja are to be governed by the proviso of Section 25-FFF of the Industrial Disputes Act and are entitled to wages not exceeding their average pay for three months. Unfortunately, W.W. No. 3, Sachindraprasad Das not having completed the span of 'continuous service' of one year is not entitled to any compensation.”

This Tribunal relying upon a decision of the Supreme Court reported in AIR 1996 SC Page-1565 (State of Himachal Pradesh Vs. Suresh Kumar Verma) came to the conclusion that. “..... this Tribunal cannot give direction for re-engagement of the named persons of the reference, but nevertheless directs that in the event of carrying out any work by the first party management requiring engagement of N.M.R. mazdoors, the named persons of the reference should be engaged as N.M.Rs.”

Feeling aggrieved by the Award, dated the 21st November 1997 passed by this Tribunal, the workmen preferred O.J.C. No. 5161 of 1998 which was disposed of on the 25th March 2004. The relevant portions of the order passed in it reads thus :—

“In view of the aforesaid patent errors committed by the Tribunal which are apparent on the face of the record, I have no hesitation to set aside the award and remand the matter back to the Tribunal for fresh disposal in accordance with the materials available and keeping

in mind the *inter se* pleadings of the parties. Accordingly, the award, dated the 21st November 1997 passed in I.D. Case No. 37/1994 by the Presiding Officer, Industrial Tribunal, Bhubaneswar is set aside. The matter is remitted back to the Presiding Officer, Industrial Tribunal with a direction to rehear the matter *de novo* after giving adequate opportunity to either party liberty is also given to the parties to file additional written statements, if they are so advised.....”

On the basis of the said order, the workmen filed additional statement of claim and the management submitted additional written statement in the proceeding. An additional issue “whether the second party workmen have completed 240 days of continuous service” was framed. The workmen were further examined and cross-examined. They got marked Ext. 1. The management examined M.W. No. 3, Shri Basant Kumar Panigrahi, S.D.O., Basudevpur Irrigation and got marked Exts. D, D/1 to D/3

ISSUE No. 4

6. The workmen raised a contention that they had worked continuously for 240 days under the management in their pleadings. The management in its rejoinder has contended that the workmen were engaged as and when work was available and they had not completed 240 days of service. Now coming to the question of burden of proof as to completion of 240 days continuous work in a year, the law is well settled in the cases of Range Forest Officer V.S.T. Hadimani reported in 2001 (1) CLR 922 and Deputy Executive Engineer, I and P, RC Department, Vijayawada and another V. Padamati Balaramiah and another reported in 2003 (2) LLJ 396 that the workman who asserted that he completed 240 days which was denied by the management has a responsibility and burden to prove that he had, infact, worked for 240 days in a year preceding his termination. Paragraph 10 of the judgment reported in Union of India through Divisional Railway Manager, Mumbai V. Jairaj N. Shetty [2003 (3) CLR 374] reads as follows :—

“10. The rulings of the Appex Court referred to above would disclose that merely because temporary employee working on daily wages is engaged on the need basis, he does not acquire a right to claim relief in terms of Section 25 (f) of the said Act. The burden of proving the fact that the employee has rendered services for 240 days in a year lies upon employee when such claim is denied by the employer. The completion of 240 days has to be in the year preceding the termination of the employee to avail the benefit under Section 25 (f) read with Section 25 (b) of the said Act. For the purpose of computation of period of 240 days in a year, it is not necessary for the employee to be in service of the employer for the whole one year and secondly that the period of 240 days may not be a period of continuous 240 days and it is sufficient if total number of 240 days is calculated with reference to a period of twelve months. In other words, an employee should render service for total number of any 240 days in a period of continuous 265 days.”

It is for the workmen to lead evidence to show that they had worked for 240 days in the preceding twelve months prior to their alleged retrenchment. The workmen have not produced any document in the form of letter of appointment or termination, receipt indicating payment

of wages etc. They stepped into the witness box and gave evidence. W. W. No. 1, Shri Gopinath Rana has stated that he worked as an N.M.R. under the S.D.O., Irrigation, Basudevpur from the 10th March 1984 to the 14th August 1989 when he was retrenched from service. Since the date of his appointment he was getting Rs. 345 per month excluding the wages for Sundays. On further examination he has stated that he had worked for 240 days in a given year, the records of it are available with the management. Persons, namely, Gajendra Mohakud, Sadananda Sahu, Subash Basantray, Sanatan Nayak, who were junior to them were engaged afresh as N.M. Rs. after their retrenchment and they are still working. The witness denied the suggestion that he was working as a D.L.R. with effect from the 1st May 1985. He also denied the suggestion that they were appointed as daily wagers. A suggestion was further put to him in cross-examination that they had not completed 240 days continuously which he denied. In cross-examination he stated that they used to sign in the attendance register showing their attendance.

Similar is the evidence of W.W. Nos. 2,3, 4 and 5, W.W. No. 2, Shri Dibakar Das has only added that he worked as a D.L.R. since the 10th March 1984 under the S.D.O., Irrigation, Basudevpur and as an N.M.R. with effect from 1987 till the 14th October 1989 when he was retrenched. He had worked for more than 240 days in the preceding year. W.W. No. 3, Shri Sachindra Prasad Das has said that he worked as an N.M.R. under the S.D.O., Irrigation, Basudevpur with effect from the 10th March 1984 and worked as such till the 10th January 1990 when the authority did not allow him to work. A suggestion was put to him in cross-examination that he was ousted from his assignment from the 22nd May 1989 which he denied.

W.W. No. 4, Shri Raghunath Puhan in his evidence has stated that he worked from the 10th March 1984 to the 31st July 1989 as a D.L.R. under the management. On the 31st July 1989 he was retrenched. According to him, he was getting a consolidated sum of Rs. 345 per month. During the period of engagement he was supervising the work of the labourers doing earth work. The witness denied the suggestion that he voluntarily abandoned the work.

W.W. No. 5, Shri Brundaban Bhanja has said that he worked from the 1st July 1980 to the 31st July 1989 as N.M.R. when he was retrenched. During his employment he was supervising the work of the labourers engaged in creeks. In cross-examination he has stated that he was taking wages by giving endorsement in a Khata. The witness denied the suggestion that he abandoned the service voluntarily.

7. There is no dispute to the effect that the workmen have worked with the management. M.W. No. 3, Shri Basanta Kumar Panigrahi, Assistant Engineer-cum-S.D.O., Basudevpur Irrigation himself has not denied this fact. According to him, they were mainly attending to the earth work, survey work and repairing of river embankment. At times they were being engaged for guarding the embankments. M.W. No. 1, Shri Govinda Chandra Swain, Junior Engineer, Irrigation Subdivision, Soro and M.W. No. 2, Shri Damodar Panda, Junior Engineer, Khaira Subdivision of Karkona Section have proved the engagement statements. They in their evidence have given details of number of days which the workmen worked and supported the records maintained by them. The engagement statements, marked as Exts. A, B, C and C/1 to a large extent supported the case of the workmen as their services with the management. The management has failed to produce any measurement book, admittedly available with it or the voucher of the wage in respect of the workmen in order to make its position clear.

In addition to this, the management has also failed to produce any document as to what was the nature of appointment of the workmen. The workmen have clearly stated that they were made payment by making endorsement in a Khata but the management has not produced any document pertainig to them. Apart from that, there is no rebuttal of the claim of the workmen by the management. The management if wanted to establish anything contrary, it was obligatory upon it to produce such records including the attendance register to establish the fact that the workmen have not completed 240 days in a year and it had not engaged Shri Gajendra Mohakud, Sadananda Barik, Subash Basant Ray & Sanatan Bhoi afresh as N.M.Rs. after the retrenchment of the workmen under reference. Non-production of material documents in power and possession of a party to the 'lis' would inevitably result in drawing of an adverse inference against the party. Production of best evidence is obligatory upon the parties dehors the specific onus on either of them. Thus, in this view of the matter, I hold that the workmen had worked for 240 days as workmen with the management.

Issue No. 4, is therefore, answered in favour of the second party workmen.

ISSUE No. 2

8. In view of my detail discussion on Issue No. 4, I hold that the action of the first party management in retrenching the second party workmen from service is neither legal nor justified.

ISSUE No. 3

9. Now coming to the question of relief to which the second party workmen are entitled, it is not the case of the workmen that they remained unemployed. They were labourers. They must have earned some money for the entire period. The workmen had not made any specific claim that despite best efforts they were not able to get any employment. Except Shri Sachindra Prasad Das, the other workmen have received compensation under Exts. D, D/1 to D/3 in the year 1998. In the circumstance therefore, the first party management is directed to re-employ the second party workmen afresh in its establishment within one month from the date of publication of this Award in the Official Gazette. The second party workmen, however, are not entitled to any back wages.

ISSUE No. 1

10. In absence of any evidence on Issue No. 1, I hold the reference to be maintainable.

Dictated and corrected by me.

Sk. JAN HOSSAIN

31-12-2005

Presiding Officer

Industrial Tribunal, Bhubaneswar

Sk. JAN HOSSAIN

31-12-2005

Presiding Officer

Industrial Tribunal, Bhubaneswar

By order of the Governor

D. MISHRA

Under-Secretary to Government